IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 29 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANHAIYALAL LAKHAMAJI KHATRI

Versus

STATE OF GUJARAT

Appearance:

MS KUSUM M SHAH for Petitioner

MR KC SHAH, APP for Respondent No. 1

MR KR RAVAL for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/10/2000

ORAL JUDGEMENT

1. This revision is directed against the judgment and order dated October 30, 1996 of the learned Additional Sessions Judge, Banaskantha at Palanpur, dismissing the appeal of the revisionist and confirming the judgment and order of the learned Judicial Magistrate, Palanpur, convicting and sentencing the

revisionist under secs.7/16 of the Prevention of Food Adulteration Act.

2. Learned counsel for the revisionist, Shri KC Shah, learned APP and Shri KR Raval for the respondent no.2 have been heard.

3. Learned counsel for the revisionist has raised several contentions that the order of remand passed by the lower Appellate Court is not justified and, from the evidence on record it was a fit case where the revisionist should have been acquitted. Special reference is made to non-compliance of sec.13(2) of the Prevention of Food Adulteration Act.

4. After going through the judgment under appeal, I find that the lower Appellate Court has not touched the merits of the case, and the judgment and order of the learned Magistrate was set-aside mainly on the ground that certain documents viz. Exhibits (27) to (64) have not been properly proved by examining the complainant and other witnesses. And, as such, these documents were wrongly relied upon by the learned Magistrate.

5. Thus, without touching the merits of the case, only on this ground, the judgment and order of the learned Magistrate was set-aside by the lower Appellate Court and the case was remanded for fresh trial. It was also directed that the Chief Judicial Magistrate shall transfer the Criminal Case from the file of the Judicial Magistrate, Deesa to the Judicial Magistrate, Palanpur for fresh trial.

6. Since the merits of the case have not been touched by the Appellate Court, it would not be desirable for the Revisional Court to reappraise the evidence which was not at all reappreciated by the lower Appellate Court. The matter, as it stands, has to be retried by the Judicial Magistrate.

7. Learned counsel for the revisionist has, however, pointed out that it will be highly expensive and inconvenient for the revisionist to attend the Court of Judicial Magistrate at Palanpur. She has requested that the Criminal Case be transferred to the Court of Judicial Magistrate, Deesa. For this, Shri Raval, representing the respondent no.2 has no objection.

8. In view of the above discussions, the appeal is dismissed with modification that Criminal Case No.327/90 shall be tried de novo by the Judicial Magistrate at

Deesa and not by the Judicial Magistrate, Palanpur. The Judicial Magistrate, Deesa shall decide the case expeditiously, as far as possible, within a period of six months from the date of receipt of copy of this order, in as much as the Criminal Case was instituted in the year 1990.

October 5, 2000. (D.C. Srivastava, J.)

/sakkaf